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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Charles watershed for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. CLF’s membership includes people who live in or near the

Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter. This Notice supplements and incorporates by reference the 60-day Notice Letter dated September 19, 2016, that CLF sent to A. Graziano, Inc.’s President and Registered Agent.

The subject of this action is four-fold. First, Graziano Brothers Inc., A. Graziano, Inc., and Dennis Graziano, Trustee of M & G Realty Trust u/d/t (hereinafter collectively “Graziano”) are discharging stormwater directly associated with the ready-mix concrete manufacturing and construction sand and gravel facility located at 71 Adams Street, Braintree, MA 02184 (the “Facility”), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Graziano has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit² (“MSGP”) adopted by the United States Environmental Protection Agency (“EPA”) for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). Third, Graziano has failed to obtain individual National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the Facility’s process water discharges. Fourth, Graziano has violated Section 404 of the Clean Water Act, 33 U.S.C. § 1344, by placing fill material into Waters of the United States without authorization under a permit issued by the Army Corps of Engineers.

BACKGROUND

The Monaquot River is a waterway within the Charles watershed. Graziano discharges stormwater associated with industrial activity and process water, and has placed fill material, into the Monaquot River (Waterbody ID MA74-08). Thereafter, the Monaquot River flows into the Weymouth Fore River (Waterbody ID MA74-14), which flows for approximately four miles before flowing into Hingham Bay (Waterbody IDs MA70-06 and MA70-07), Massachusetts Bay, and the Atlantic Ocean. EPA has designated the Monaquot River (Waterbody ID MA74-08) as a habitat for “fish, shellfish, and wildlife protection and propagation” and recreation.³

Charles watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF’s members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

² ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) (June 5, 2015), https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_finalpermit.pdf [hereinafter MSGP].

³ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR THE MONAQUOT RIVER (WATERBODY ID MA74-08) (2014),

EPA has designated the Weymouth Fore River (Waterbody ID MA74-14) as a habitat for “aquatic life harvesting” and recreation.⁴ EPA has designated Hingham Bay (Waterbody IDs MA70-06 and MA70-07) as a habitat for “fish, shellfish, and wildlife protection and propagation,” “aquatic life harvesting,” and recreation.⁵⁶ The use of these waterways for other purposes is not assessed at this time.

EPA has designated the Monaquot River (Waterbody ID MA74-08) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.⁷ The Monaquot River is impaired for organic enrichment/oxygen depletion (dissolved oxygen), pathogens (fecal coliform), habitat alterations (physical substrate habitat alterations), and impaired biota (aquatic macroinvertebrate bioassessments). Stormwater is a probable source of impairments in Waterbody MA74-08.⁸

The Monaquot River (Waterbody ID MA74-08) flows into the Weymouth Fore River (Waterbody ID MA74-14). The Weymouth Fore River is impaired for pathogens (fecal coliform), polychlorinated biphenyls (PCBs) in fish tissue, and unidentified other causes. Stormwater is a probable source of impairments in Waterbody MA74-14.⁹

The Weymouth Fore River (Waterbody ID MA74-14) flows into Hingham Bay (Waterbody IDs MA70-06 and 70-07). Hingham Bay is impaired for pathogens (fecal coliform), polychlorinated biphenyls (PCBs) in fish tissue, and unidentified other causes. Stormwater is a probable source of impairments in Waterbodies MA70-06 and 70-07.¹⁰

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.¹¹ Industrial activities, such as material handling and storage,

https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA74-08&p_list_id=MA74-08&p_cycle=2014.

⁴ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR THE WEYMOUTH FORE RIVER (WATERBODY ID MA74-14) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA74-14&p_list_id=MA74-14&p_cycle=2014.

⁵ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR HINGHAM BAY (WATERBODY ID MA70-06) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA70-06&p_list_id=MA70-06&p_cycle=2014.

⁶ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR HINGHAM BAY (WATERBODY ID MA70-07) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA70-07&p_list_id=MA70-07&p_cycle=2014.

⁷ See 33 U.S.C. § 1313(d).

⁸ See U.S. ENVTL. PROTECTION AGENCY, *supra* note 3.

⁹ See U.S. ENVTL. PROTECTION AGENCY, *supra* note 4.

¹⁰ See U.S. ENVTL. PROTECTION AGENCY, *supra* note 5; U.S. ENVTL. PROTECTION AGENCY, *supra* note 6.

¹¹ See 40 C.F.R. § 122.26(b)(13).

equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater.¹² Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹³

Graziano is required to apply for coverage under a Clean Water Act discharge permit—such as the MSGP—in order to lawfully discharge stormwater associated with industrial activity. Since at least 2010, Graziano has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within 90 days after the initial issuance of the MSGP.¹⁴ On June 16, 2015, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit. Graziano is required apply for coverage under a Clean Water Act individual discharge permit in order to lawfully discharge process water. Graziano is required to apply for coverage under a Clean Water Act Section 404 permit in order to lawfully discharge dredged or fill material into the navigable waters.

Graziano has failed to obtain coverage under the MSGP, an individual permit, and Section 404 dredge or fill permit, or any other valid authorization, at any time. Therefore, Graziano is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Graziano Brothers Inc., A. Graziano, Inc., and Dennis Graziano, Trustee of M & G Realty Trust u/d/t are the persons, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Graziano Brothers Inc. has operated the Facility since at least 2012 and currently advertises as an operator of the Facility, and is registered with the Massachusetts Secretary of the Commonwealth as an operator of the Facility.¹⁵ A. Graziano has operated the Facility since at least 1952 and advertised as an operator of the Facility as recently as five months ago, and is registered with the Massachusetts Secretary of the Commonwealth as an operator of the Facility.¹⁶ Dennis Graziano is the Trustee of M & G Realty Trust u/d/t (apparently a personal

¹² See 40 C.F.R. § 122.26(b)(14).

¹³ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

¹⁴ EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995 and later reissued in 2000, 2008, and 2015. See 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015); see also MSGP, *supra* note 2, pts.1.1–1.2.

¹⁵ See SEC’Y OF THE COMMONWEALTH OF MASS.: CORPS. DIV. BUS. ENTITY SUMMARY: GRAZIANO BROTHERS INC.,

http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=611686672&SEARCH_TYPE=1 (last visited May 12, 2017).

¹⁶ See SEC’Y OF THE COMMONWEALTH OF MASS.: CORPS. DIV. BUS. ENTITY SUMMARY: A. GRAZIANO, INC., http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042148083&SEARCH_TYPE=1 (last visited May 12, 2017).

trust), and M & G Realty Trust has possessed the right, title, and interest in the land parcel located at 71 Adams Street, Braintree, MA 02184 since at least 1995. Dennis Graziano, Trustee of M & G Realty Trust u/d/t, continues to manage the property upon which Graziano Brothers Inc. and A. Graziano, Inc. operate the Facility. Graziano Brothers Inc., A. Graziano, Inc., and their agents and directors—including but not limited to Augustine and Augustino Graziano, Presidents—have operational control over the day-to-day industrial activities at this Facility. Dennis Graziano, Trustee of M & G Realty Trust u/d/t, owns and manages the property underlying this Facility. Therefore, Graziano Brothers Inc., A. Graziano Inc., and Dennis Graziano, Trustee of M & G Realty Trust u/d/t, are responsible for managing stormwater, process water, and discharges of dredge and fill material at the Facility in compliance with the Clean Water Act.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the ready-mix concrete manufacturing and construction sand and gravel Facility located at 71 Adams Street, Braintree, MA 02184.

ACTIVITIES ALLEGED TO BE VIOLATIONS

Graziano has engaged, and continues to engage in “industrial activities” and its operations fall under SIC codes 3273 (ready-mix concrete manufacturing) and 1442 (construction sand and gravel), within the meaning of 40 C.F.R. § 122.26(b)(14).¹⁷ Because the Facility has primary SIC codes of 3273 and 1442 and discharges stormwater associated with industrial activity, Graziano is required to apply for coverage, obtain coverage, and comply with the requirements of a NPDES permit such as the MSGP. Graziano has failed to take any of these required steps.

Activities at the Facility include, but are not limited to: storing, moving, and processing concrete, sand, gravel (exposed aggregate), and other materials outside or otherwise exposing them to the elements; operating and storing heavy machinery and equipment outdoors; and driving vehicles on and off the Facility thereby tracking pollutants off-site. All of these activities at the Facility have contaminated the site with industrial pollutants.

Concrete, sand, gravel (exposed aggregate), and other materials; machinery and equipment; and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the sand and gravel piles; machinery and equipment; and vehicles, picking up dust, total suspended solids (TSS), total dissolved solids (TDS), fines, diesel/gas fuel, oil, heavy

¹⁷ See MSGP, *supra* note 2, at appen. D. Concrete, gypsum, and plaster product facilities identified by the SIC codes 3271-3275 (including SIC code 3273) and construction sand and gravel facilities identified by the SIC code 1442 are subject to the requirements of the MSGP for stormwater discharges.

metals, trash, and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site into waters of the United States.

In addition, to the extent that Graziano uses water in its industrial processes, including but not limited to washing sand, rock and gravel and spraying water on rock crushing and sorting machinery, that water becomes "process wastewater" (also referred to as "process water") as defined in 40 C.F.R. § 122.2.¹⁸ Discharges of process wastewater are not covered under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Discharges of process wastewater must instead be covered under an individual NPDES permit. CLF intends to pursue claims related to Graziano's unpermitted discharges of process water to waters of the United States.

Moreover, as recently as February, 2017, MassDEP found Graziano (specifically, Dennis Graziano, Trustee) to be "not in compliance" due to unlawful disposal of fill material and alteration of the floodplain of the Monaquot River. This unpermitted discharge of dredge and fill material violates Sections 402 and 404 of the Clean Water Act and CLF intends to pursue claims related to unpermitted discharges of fill to waters of the United States.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁹ Graziano discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility into waters of the United States. Because Graziano has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).²⁰ By failing to apply for and comply with the specific requirements of the MSGP, Graziano is in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of 33 U.S.C. § 1311(a) and CLF puts Graziano on notice that CLF intends to pursue claims related to Graziano's unpermitted discharges of process wastewater to waters of the United States. Moreover, as described above, the permit required for disposal of dredge and fill material is an "effluent standard or limitation" under 33 U.S.C. § 1365(f) and Graziano's failure to apply for

¹⁸ Defining "Process wastewater" as "any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product."

¹⁹ 33 U.S.C. § 1311(a).

²⁰ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; see also MSGP, *supra* note 2, at appen. A (defining the term "discharge of a pollutant" as, *inter alia*, "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'").

and obtain a dredge and fill permit prior to discharging fill into the floodplain of the Monatiquot River constitutes an additional violation.

a. Graziano is discharging stormwater to waters of the United States without a permit.

Graziano is an industrial discharger with primary SIC codes of 3273 and 1442, which means that pursuant to Section 402(p) of the Act, Graziano is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because Graziano has operated and continues to operate without a permit under Section 402(p), Graziano is in violation of Section 301(a) of the Act.

In addition, during storm events, Graziano's "industrial activities" at its Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches.²¹ There have been many such storm events since 2010. The Facility is generating pollutants from and through at least the following point sources: the concrete, sand, gravel, and various other material piles that are open to the elements; the machines and equipment left outdoors, and the vehicles driving on and off the Facility, while additionally conveying pollutants through site grading, surface water channels, subsurface hydrological connections, detention ponds, culverts, and other conveyances to the Monatiquot River.²² The Monatiquot River flows into the Weymouth Fore River, which thereafter flows into Hingham Bay. Hingham Bay eventually flows into Massachusetts Bay and the Atlantic Ocean. All of the aforementioned waterbodies are "waters of the United States," as defined in 40 C.F.R. § 122.2, and therefore, "navigable waters," as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Graziano is discharging process water to waters of the United States without a permit.

²¹ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

²² These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. CLF specifically puts A. Graziano on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2 (stating that the definition of "discharge of a pollutant" "includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man[.]").

Wastewater associated with industrial processes, including, but not limited to, washing materials and paved surfaces and spraying machinery, is classified as “process wastewater” under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2. Wastewater produced by washing materials and paved surfaces and spraying machinery can contain a variety of pollutants, including detergents, oil, grease, heavy metals, and other pollutants associated with the Facility’s operations. In addition, solids suspended or dissolved in washwater can pollute ground and surface waters. Process wastewater can have severe and long-term impacts on aquatic environments.

Discharges of process water that result from washing materials and paved surfaces and spraying machinery are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. Graziano does not have an individual NPDES permit authorizing the discharge of process water to waters of the United States. CLF intends to pursue claims related to Graziano’s unpermitted discharges of process water to waters of the United States, namely the Monaquot River.

c. Graziano is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

Graziano is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.²³ The Facility has primary SIC codes of 3273 and 1442 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.²⁴ Graziano’s failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402, 33 U.S.C. § 1342(p) of the Clean Water Act.²⁵

1) Graziano Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).

As a prerequisite to applying for coverage under the MSGP, Graziano must develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”).²⁶ The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²⁷ Graziano has failed to develop and implement a SWPPP in accordance with the MSGP

²³ See MSGP, *supra* note 2, pts. 1.1–1.2.

²⁴ See MSGP, *supra* note 2, pts. 1.1, 8.J, 8.E.

²⁵ A thorough search of EPA’s databases indicates that A. Graziano has not filed an NOI for the Facility.

²⁶ See MSGP, *supra* note 2, pt. 5.

²⁷ *Id.* at pt. 5.2.

requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

2) Graziano Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, Graziano must submit a complete Notice of Intent (“NOI”) to the EPA.²⁸ To complete the NOI, Graziano is required to determine whether the body of water to which the stormwater discharges is an “impaired” water body, and whether the Facility discharges any specific pollutants listed on the NOI to that water body.²⁹ The Monaquot River (Waterbody MA74-08) is classified as an “impaired” water.³⁰ Additionally, as part of preparing the NOI, the covered Facility must make certain verifications such as ensuring that no harm is done to a species in violation of the Endangered Species Act.³¹ Graziano has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) Graziano Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, Graziano must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Graziano must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.³² These control practices must be in accordance with good engineering practices and manufacturer’s specifications.³³ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.³⁴ Graziano has failed to cover the materials and operations that may result in polluted stormwater runoff. Graziano has not implemented the required control measures in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

4) Graziano Must Conduct Routine Facility Inspections.

²⁸ See MSGP, *supra* note 2, pt. 1.2.

²⁹ *Id.* at pt. 2.2.2.

³⁰ See U.S. ENVTL. PROTECTION AGENCY, *supra* note 3.

³¹ See MSGP, *supra* note 2, pts. 1.1.4.5, 2.3.

³² *Id.* at pt. 2.1.

³³ *Id.*

³⁴ *Id.*

To be eligible to discharge under the MSGP, Graziano must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.³⁵ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.³⁶ These inspections must occur when the Facility is in operation.³⁷ The schedule of these inspections must be included in the Facility's SWPPP and be performed by qualified personnel.³⁸ Graziano has failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

5) Graziano Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, Graziano must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³⁹ The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.⁴⁰ An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.⁴¹ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.⁴² All monitoring data collected under the Permit must be reported to EPA. Furthermore, because the Monatiquot River is an "impaired water" under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), Graziano must monitor for all pollutants for the Monatiquot River is impaired.⁴³ Graziano has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) Graziano Must Carry Out the Required Reporting and Recordkeeping.

Graziano must maintain and submit any and all required monitoring data.⁴⁴ Such monitoring data includes the following: an annual report to EPA which includes the Facility's findings from the annual comprehensive site inspection and any documentation of corrective actions;⁴⁵ an

³⁵ *Id.* at pt. 3.1.

³⁶ *Id.*

³⁷ *See* MSGP, *supra* note 2, pt. 3.1

³⁸ *Id.*

³⁹ *Id.* at pt. 6.

⁴⁰ *Id.* at pt. 6.2.

⁴¹ *Id.* at pt. 6.1.1.

⁴² *Id.* at pt. 6.1.3.

⁴³ *Id.* at pt. 6.2.4

⁴⁴ *Id.* at pt. 7.1

⁴⁵ *Id.* at pt. 7.5.

Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;⁴⁶ and any other required reports under the MSGP.⁴⁷ Graziano has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

7) Graziano Must Comply with the Requirements of MSGP Subparts E and J

Graziano must also comply with the sector-specific requirements contained in Subparts E and J of the MSGP.⁴⁸ Subpart E requires glass, clay, cement, concrete, and gypsum product facilities to implement additional technology-based effluent limits,⁴⁹ meet additional SWPPP and inspection requirements,⁵⁰ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to glass, clay, cement, concrete, and gypsum product facilities.⁵¹ Subpart J requires construction sand and gravel facilities to implement additional technology-based effluent limits,⁵² meet additional SWPPP and inspection requirements,⁵³ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to construction sand and gravel facilities.⁵⁴ Graziano must also minimize contact of stormwater runoff with concrete, sand, gravel, stockpiled materials, processed materials and non-recyclable wastes through various control measures such as permanent or semi-permanent covers or roofs, interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.⁵⁵ Graziano has failed to comply with the requirements of Subparts E and J of the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

d. Graziano is violating the Clean Water Act by failing to obtain coverage under and comply with the requirements of a permit for the disposal of dredge and fill material under Clean Water Act Section 402 and 404.

As described in the Order of Resource Area Delineation issued to Dennis Graziano, Trustee of M & G Realty Trust u/d/t by MassDEP on February 14, 2017, Graziano has placed fill material into the floodplain of the Monaquot River without a permit and failed to create

⁴⁶ *Id.* at pt. 7.6.

⁴⁷ *Id.* at pt. 7.7.

⁴⁸ See MSGP, *supra* note 2, at appen. D, Table D-1, Sectors E and J; pts 8.E, 8.J.

⁴⁹ *Id.* at pt. 8.E.2.

⁵⁰ *Id.* at pt. 8.E.3.

⁵¹ *Id.* at pts. 8.E.4, 8.E.5.

⁵² *Id.* at pts. 8.J.4, 8.J.5.

⁵³ *Id.* at pts. 8.J.6, 8.J.7.

⁵⁴ *Id.* at pt. 8.J.8.

⁵⁵ *Id.* at pt. 8.J.5.2.

compensatory flood storage associated with a garage building on the facility. Graziano's failure to comply with state and federal laws regarding disposal of fill material violates the Clean Water Act.

DATES OF VIOLATION

Each day on which Graziano operates its Facility without permit coverage or discharges stormwater and/or process water without a permit from the Facility is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Graziano has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least 2010 on which there has been a measurable precipitation event. Each day on which Graziano operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Every day, since at least 2010, on which Graziano has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

Each and every day that unpermitted dredge or fill material remains in waters of the United States is a separate and distinct violation of CWA Section 402 and 404.

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Graziano Brothers Inc., A. Graziano, Inc., and Dennis Graziano, Trustee of M & G Realty Trust u/d/t, are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Graziano to a penalty of up to \$37,500 per day per violation for all violations occurring from January 12, 2009 through November 2, 2015, and \$51,570 for penalties that are assessed on or after August 1, 2016, for violations that occurred after November 2, 2015.⁵⁶ CLF will seek the full penalties allowed by law.

⁵⁶ See 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Graziano to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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